

**REMARKS****Status of the Claims**

After the amendment herein, claims 1 - 22 are pending.

Claims 1 - 22 were rejected.

Claims 1, 2, and 20 are amended herein.

Claims 1, 11, 12, 13, and 18 are independent claims.

Attached hereto are pages entitled "CLAIMS MARKED TO SHOW CHANGES MADE" which detail changes made to the application by the current amendment.

**Rejection Under 35 U.S.C. § 103(a)**

Claims 1, 2, 7, 8, 11, 12, and 15 were rejected under 35 U.S.C. 103 as obvious over Gerrard (U.S. Patent No. 5,435,295) in view of WEBSTER'S II Riverside University Dictionary (1984). The Office asserts that Gerrard discloses a fireplace grate comprising a frame 1 including a plurality of grate members 5, and cross members 10 11, a base 2, and an upper frame/cage member 3, having a second plurality of grate members 19 20, and cross members 23 24, wherein the grate members define a compartment/cavity to hold a firelog 34 (see area defined by support members 10 11, and support bars 23 24, and Figs. 2, 4). The Office further asserts that support members extend along the bottom of the compartment and fully support logs placed thereon and the ceramic logs are placed on top of the horizontal support bars and direct contact is prevented between the firelog and the ceramic logs (see Fig. 4).

The Office also asserts that a platform is "a floor or horizontal surface raised above the level of the adjacent area" and that support bars 23 24, are horizontal surfaces that support a ceramic log above the fireplace floor. The Office further alleges support bars 23 24, support members 10 11, and fibre logs 31 32 33, create a substantially enclosed compartment as defined in the applicants figures and specification, in particular Figs. 4A-B and 5A-B.

With respect to claims 7, 8, and 12, the Office asserts that additional support bars may be added as desired to provide support for additional firelogs, that a poker positioned in V-notch 28 in front protector bar 27 may be used to open the upper frame/cage member, and that a ceramic

log is secured by pins 25 26, to the upper frame/cage member 3, which is attached to the frame 1 by pivot arms 17.

The applicant respectfully traverses the rejection and submits that the structure of the fireplace grate, as claimed, is distinguishable from the cited references. The application teaches a fireplace grate that isolates a firelog or starter material from a wood or ceramic log. The grate includes grate members and cross members that define a supporting platform for holding wood or ceramic logs in selected positions on the platform and a substantially enclosed compartment depending from the platform for holding the firelog in isolation. The figures illustrate this fireplace as a frame 102 including a base 110 having a U-shaped portion 130 in Fig. 1. The fireplace grate of the invention is similarly illustrated in Figs. 3-5 (base: 310, 410, 510; U-shaped portion 330, 430, 530).

The disclosed fireplace grate is multi-function; that is, the grate can be used with firelogs in combination with wood logs, ceramic logs or the combination of wood and ceramic logs. As the applicant discusses, some homeowners use both fire logs and wood or ceramic logs together in a fireplace. Fireplace usage of this type raises various safety considerations. In turn, these safety considerations drive the need for a fireplace grate safer than those of the prior art and impact the design of fireplace grate provided by the applicant. See Background of Invention p 1, ln. 12 – p. 3, ln. 10.

Each function of the multi-function fireplace grate has needs/requirements that are separate and different. Nevertheless, in both functions, the fireplace grate must support a burning firelog to prevent the firelog from breaking apart and releasing its stored energy in an uncontrolled manner. A standard fire log contains seventy-five thousand to eighty-five thousand BTU (75,000-85,000BTU) of stored energy. This stored energy must be released slowly, as designed by the firelog manufacturer, in order to safely provide heat.

As a firelog burns, it is consumed from the outside in, in a controlled burn. Should the firelog be broken apart during burning, the stored energy could be released in a uncontrolled manner, creating a flare-up of the chemicals and materials of which it is composed. A flare-up can create an unsafe smoke and/or fire condition in the room containing the fireplace. Other combustible materials, such as natural wood, coal, etc., that are used with conventional fireplace grates do not burn out of control (i.e., flare up) if disturbed but burn at a predictable rate based

on factors such as dryness, how seasoned, amount of product, and how it is staked (e.g., fire climbs and embers settle to build a base of hot coals).

A singular fireplace grate is provided for use with firelogs in combination with wood logs and/or ceramic logs, use of each type of log having different requirements. In addition to a fireplace grate with the U-shaped base forming a platform and a substantially enclosed compartment depending therefrom, the application further describes a hinged door or pivot arms for holding attached ceramic logs to more completely enclose the compartment on an additional side. See Invention Summary, p. 3. Specifically, Figs. 1-2 illustrate an embodiment with an upper cage member/hinged door 160 for use with wood logs and Figs. 4A-5C illustrate an embodiment with pivot arms for ceramic logs. It should be noted that the figures illustrate the same fireplace grate with alternative additional protection for the firelog in combination with wood (upper cage member) and in combination with ceramic logs (pivot arms holding ceramic logs). Thus, the provided fireplace grate performs both functions while providing uniquely different protection and performance. See Abstract of Invention.

Accordingly, claim 1 is directed to a fireplace grate having a shaped base forming a platform and a substantially enclosed compartment depending therefrom. Claim 1 recites a fireplace grate comprising a frame including a plurality of grate members and a plurality of cross members, said grate members and said cross members defining a platform and a substantially enclosed compartment, the compartment operative to hold a firelog and to prevent direct contact between the firelog and wood or ceramic logs placed on top of the platform.

The claimed fireplace grate supports a firelog while ensuring that the firelog does not fall from/through the grate and break up, thus flaring-up and creating a dangerous condition. When used with a wood log, the claimed fireplace grate provides enhanced safety by separating the firelog from the wood log. The firelog must be distanced and protected from the pop (burst of energy and material) occurs in natural wood logs during burning. Wood logs contain moisture that is released by a pop. The firelog must also be protected from being poked at with fireplace tools during stoking of wood logs, being crushed by a wood logs in pile of logs that falls as being consumed, or being crushed as a log is added to a fire. Any of these conditions could break apart the fire log and release its stored energy in an uncontrolled manner. The resultant flare-up fireball could over power the fireplace and send smoke and possibly flames into the room.

When used with a ceramic log, the fireplace grate must allow efficient airflow around the firelog. In many conventional fireplace grates, a firelog is placed under and burnt under a ceramic log to give the illusion that the ceramic log is burning. However, ceramic logs retain heat and may crack under excessive heat. To reduce heat build-up around the log, the claimed fireplace grate distances the firelog from the ceramic log. In addition to reducing heat, the fireplace grate protect the firelog from being crushed by the ceramic log.

The claimed apparatus is distinguishable from the Gerrard. Gerrard discloses a fireplace wire rack comprising a base 2 for supporting a firelog and an upper frame 3 pivotally connected to the base and adapted to support artificial logs. The base is a wire rack consisting of left and right side members 4, which include horizontal rails 5 connected by horizontal bars 10 11 12. Bars 10 11 are positioned at the front of the side members so that they can support paper wrapped firelogs. The upper frame is a wire rack consisting of laterally disposed side sections 13 14 connected by fibre log support bars 23 24 that have fibre log support pins 25 26 for retaining fibre logs in position.

The applicant respectfully submits that Gerrard does not anticipate the independent claim 1. The structure of the claimed apparatus is distinguishable from the structure of the cited reference. Gerrard discloses a wire rack, the base of which is vastly different from claimed fireplace grate/base having a platform with substantially enclosed compartment. The Gerrard base has an upper support for ceramic log display. Applicant's claimed fireplace grate is directed a base having a platform and a substantially enclosed compartment protecting the firelog from being crushed and not as the Office alleges, an upper support in combination with a base, which the Office further alleges teaches a protective cage.

Further, the applicant respectfully disagrees with the characterization that additional support members may be added as substantial support in Gerrard. The overall teaching of Gerrard teaches away from the claimed invention. Gerrard is clear that a firelog is placed on the base of the grate. Additional support members may be added to the base to support a second firelog or firewood. See col. 2, ln. 21. Gerrard also indicates that the base can be designed as a regular fireplace grate to accommodate paper wrapped firelogs and fire wood. See col. 3, ln. 32. Thus, all logs are place on a single plane as in conventional fireplace grate, which arrangement of firelogs and wood logs creates the unsafe condition that the applicant's claimed fireplace grate prevents. That is, Gerrard permits the direct placement of a firelog in combination with wood

logs on the base of a fireplace grate with no protection for the firelog from natural wood log pops, fireplace tools or the crush of falling logs.

Moreover, wood logs can not logically be placed on the upper support frame of Gerrard in combination with ceramic logs. First, Gerrard states the combustible logs are placed on the base. Second, were wood logs to be placed on the top of the upper frame, a host of problems arises: the arrangement would be too tall for most conventional fireplaces; ceramic logs may crack due to excessive heat when placed on wood logs or when wood logs fall on the ceramic logs; pops from natural wood logs could dislodge ceramic logs from the upper frame; wood logs could/would fall from the upper frame as they are consumed and reduce in size. All of these create the unsafe conditions that the claimed fireplace grate prevents.

The wire rack disclosure of Gerard does not teach or suggest the separation and protection of a firelog from wood log that is provided by the applicant's claims. Gerrard fails to disclose fireplace grate comprising a substantially enclosed compartment for holding a firelog and a platform depending therefrom. In contrast to Gerrard, the applicant's claimed invention recites grate members and cross members that form a platform and a substantially enclosed compartment to isolate wood logs from a firelog. In particular, the applicant's fireplace grate holds a firelog firmly on all sides with additional support on the bottom. If a natural wood log pop pushes on the front of the firelog, support is provided in the back, if pushed in the back, support is provided in the front, if pushed from above, support is provided on the bottom. See Figs. 1-3. The grate also restricts the distance and size of the piece of wood log that can access the firelog by falling through the grate, which is important during the start of a fire when a firelog contains most of its stored energy.

Gerrard fails to disclose or suggest a structure that address these problems. A reference only anticipates a claim when the reference teaches each and every limitation recited by the claim. The applicant therefore submits that Gerrard fails to anticipate each and every limitation of independent claim 1 and that the claim is patentable over the Gerrard. Thus, the applicant respectfully requests withdrawal of the rejection and allowance of claim 1.

Claims 2, 7, and 8 depend directly and indirectly from claim 1 and thus include all of the limitations of claim 1. The applicant reiterates that claim 1 is patentable over the cited art for the reasons stated above, specifically the failure of the cited art to teach each and every limitation of

the independent claims. Accordingly, dependent claims 2, 7, 8, 17, and 18 are believed patentable based on such dependency and further limitation within each claim.

Independent claims 11, 12, and 19 recites the disclosed invention in alternative terms. Specifically, the claims recite a fireplace grate including, in part, grate members and cross members that define a platform and a substantially enclosed compartment depending therefrom. Therefore, for the reasons above, the applicant submits that these independent claims are patentable over Gerrard. Gerrard fails to disclose or suggest a platform for logs and a substantially enclosed compartment for a firelog depending from the platform. Accordingly, the applicant respectfully requests withdrawal of the rejection and allowance of these independent claims.

Based on claim dependency, the applicant also submits that claims 14-16 and 20-22 are also patentable over the cited reference. In particular, the applicant notes that Gerrard fails to teach or suggest a supporting member extending longitudinally across the bottom of the compartment which would serve to support the underside of firelog in the compartment. The supporting member prevents the firelog from falling through the grate members as the firelog loses rigidity and begins to fall apart., preventing flare-up.

Claims 3, 4, 13, and 14 are rejected under 35 U.S.C. 103 as obvious over Gerrard in view of Kutchera (U.S. Patent No. 2,519,482). The Office asserts that Gerrard discloses all limitations of the claims except that the fireplace grate is explicitly "hinged" to the base, that the grate members include a U-shaped portion, and that the ceramic log is explicitly "hinged" to the frame. However, the Office asserts that Kutchera teaches that the term "hinge" and "pivot" are understood to be equivalent terms for describing structure that permits grate sections to swing from a first position to a second position, and that Kutchera teaches grate sections 11 having bars 12 that are substantially U-shaped and serve as a fuel support.

Claims 3 and 4 depend from and include all of the limitations of claim 1. As such, these claims defined a fireplace grate including a frame having a platform and a substantially enclosed compartment. Accordingly, the applicant reiterates the remarks above concerning the failure of Gerrard to disclose or suggest a frame with a platform and a substantially enclosed compartment. Kutchera also fails to disclose or suggest these features, merely disclosing a fireplace grate in the form of a U-shaped basket having two hinged sections.

With respect to the assertion that Gerrard teaches a pivot means and Kutchera teaches a pivot means is equivalent to a hinge means, the applicant notes the Office's use of the term "pivot" only in its verb sense to describe motion about a point. Gerrard teaches a pivot means formed by one piece of low carbon wire rod bent as illustrated in Fig. 1. See column 2, line 8 – 15. Kutchera uses the term "pivot" only in describing the motion of the basket sections of the fireplace grate provided by a pivot flange or hinge. See column 3, line 34. The grate sections are pivotally mounted on one of the rods by provision of any desired number of depending flanges or ears secured to, or formed integral with, the outer bar of each section. See column 3, line 23 – 31. The present application discloses a different structure (see Figs. 2 and 4) than that of the cited references. It is respectfully submitted that claims 3 and 4 are patentable based on claim dependency and any further patentable limitation contained within each claim.

Independent claim 13 recites the disclosed fireplace grate invention in alternative terms as including a base formed by a plurality of grate members and a plurality of cross members that define a platform and a substantially enclosed compartment depending therefrom for supporting a firelog. The fireplace grate also includes a ceramic log hinged to the base with a first position that permits the insertion of the firelog onto the compartment of the base and a second position that encloses the compartment and prevents direct contact between the firelog and wood or ceramic logs placed on top of the platform.

As stated above, the applicant submits that Gerrard and Kutchera, individually or in combination, fail to disclose or suggest a fireplace grate with a platform and a substantially enclosed compartment. In addition, neither reference discloses a ceramic log hinged to a base of a fireplace grate. Gerrard discloses a wire rack having an upper frame that pivots to a lower section of the wire rack. A log is separately attached to the upper frame of the wire rack via fibre log support pins. Kutchera discloses a fireplace grate with hinged sections. In contrast, claim 13 recites a fireplace grate including a platform and a substantially enclosed compartment, and a ceramic log hinged to the base of the fireplace grate. Accordingly, based on claim dependency and the cited references lack of disclosure or suggestion directed to all features of the claimed invention, the applicants respectfully submit that claim 13 is patentable and request withdrawal of the rejection.

Claim 5 is rejected as obvious over Gerrard in view of Thompson (U.S. Patent No. 4,360,001). Claim 6 is rejected as obvious over Gerrard in view of Dotson et al. (U.S. Patent No.

4,692,168). Claim 9 is rejected as obvious over Gerrard in view of Fischer (U.S. Patent No. 4,838,781) and Kutchera. Claim 10 is rejected as obvious over Gerrard in view of Betenbaugh (U.S. Patent No. 4,257,392).

The applicant respectfully traverses these rejections and submits that claims 5, 6, 9, and 10 are not obvious over the disclosure of Gerrard in view of the cited secondary references. A claim is obvious in light of a combination of references if the combination of references teach or suggest all of the limitations recited by the claim. The applicant respectfully submits that these claims include claimed subject matter not found in and clearly distinguishable from the disclosure of the cited references, individually or in combination. In addition, neither Gerrard, nor the cited secondary references disclose, suggest, or provide the motivation, individually or in combination, to one skilled in the art to combine the cited references in the manner suggested by the Office.

As explain throughout this Amendment and Response, Gerrard fails to disclose or suggest a fireplace grate with a platform and a substantially enclosed compartment. Similarly, the secondary references, which are relied on for other disclosure, fail to disclose these features. Accordingly, the applicant respectfully submits that the claims are not obvious in light of the cited references since, individually or in combination, the cited references fail to disclose or suggest all of the features of applicant's claimed invention. The applicant respectfully requests withdrawal of these rejections and allowance of claims 5, 6, 9, and 10.



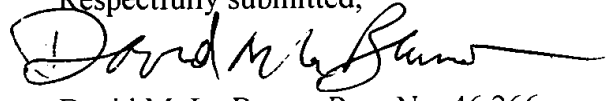
**Conclusion**

Based on the foregoing remarks, it is respectfully submitted that the claims as currently pending are patentable and in condition for allowance. Reconsideration of the application and withdrawal of all rejections are respectfully requested.. Should the Examiner disagree with the above remarks concerning the patentability of the claims as presented, the applicant respectfully requests the Examiner direct the applicant concerning claims the Examiner believes define the invention patentable over the cited references.

In the event that a telephone conference would facilitate examination in any way, the Examiner is invited to contact the undersigned representative at the number provided.

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**APPLICATION MARKED TO SHOW CHANGES MADE**  
**IN THE CLAIMS**

1. (Two Times Amended) A fireplace grate comprising a frame including a plurality of grate members and a plurality of cross members, said grate members and said cross members defining a platform and a substantially enclosed compartment depending therefrom, the compartment operative to hold a firelog and to prevent direct contact between the firelog and wood or ceramic logs placed on top of the platform.
2. (Two Times Amended) The fireplace grate of claim 1, wherein the frame includes a base defining a cavity and further includes a cage member positioned on the base to [define] further enclose the compartment.
3. The fireplace grate of claim 2, wherein the cage member is hinged to the base.
4. The fireplace grate of claim 2, wherein the base is formed by the plurality of grate members connected by the plurality of cross members, the grate members including a U-shaped portion for supporting the firelog.
5. The fireplace grate of claim 2, wherein the base is formed by the plurality of grate members connected by the plurality of cross members, the grate members including a V-shaped portion for supporting the firelog.
6. The fireplace grate of claim 1, wherein the firelog is a gel log.
7. The fireplace grate of claim 1, further comprising a plurality of compartments defined by the frame for holding a plurality of firelogs.
8. The fireplace grate of claim 3, further comprising a removable handle for moving the hinged cage member.
9. The fireplace grate of claim 2, wherein the cage member includes a hinged door.

10. The fireplace grate of claim 1, wherein the firelog is supported by at least four grate members of the frame.

11. A fireplace grate comprising a frame including a plurality of grate members and a plurality of cross members, the frame defining a platform and a substantially enclosed compartment depending therefrom, the compartment operative to hold a starter material and to prevent direct contact between the starter material and wood or ceramic logs placed on top of the platform.

12. A fireplace grate, said fireplace grate comprising:

a base formed by a plurality of grate members and a plurality of cross members, said base defining a platform and a substantially enclosed compartment depending therefrom, said base for supporting a firelog in the compartment;

at least one pivot arm; and

at least one ceramic log pivotally attached to the base by the at least one pivot arm, wherein the at least one ceramic log pivots between a first and second position, wherein the first position permits the insertion of the firelog into the compartment of the base, and wherein the second position encloses the compartment and prevents direct contact between the firelog and wood or ceramic logs placed on top of the platform of the base.

13. A fireplace grate, said fireplace grate comprising:

a base formed by a plurality of grate members and a plurality of cross members, said base defining a platform and a substantially enclosed compartment depending therefrom, said base for supporting a firelog in the compartment; and

at least one ceramic log hinged to the base, wherein the at least one ceramic log hinges between a first and second position, wherein the first position permits the insertion of the firelog into the compartment of the base, and wherein the second position encloses the compartment and prevents direct contact between the firelog and wood or ceramic logs placed on top of the platform of the base.

14. The fireplace grate of claim 13 wherein the base further includes

a supporting member extending across the bottom of the compartment.

15. The fireplace grate of claim 12 wherein the base further includes  
a supporting member extending across the bottom of the compartment.
16. The fireplace grate of claim 11 wherein the frame further includes  
a supporting member extending across the bottom of the enclosed compartment.
17. The fireplace grate of claim 1 wherein the frame further includes  
a supporting member extending across the bottom of the compartment.
18. The fireplace grate of claim 1 wherein at least two of the cross members are positioned on  
the platform proximate an opening in the platform to the compartment.
19. (Amended) A fireplace grate comprising:  
a base including  
a first plurality of grate members spaced in a parallel relation, and  
a first plurality of cross members linking the first plurality of grate members,  
wherein the base forms a platform for supporting a log and a cavity depending from the  
platform for supporting a firelog or starter material.
20. The fireplace grate of claim 18 wherein the fireplace grate further includes  
a cage member including  
a second plurality of grate members spaced in a parallel relation, and  
a second plurality of cross members linking the second plurality of grate  
members,  
wherein the cage member encloses the cavity to form an enclosed compartment that  
separates the logs from the firelog or starter material.
21. The fireplace grate of claim 18 wherein the base further includes  
a supporting member extending across the bottom of the cavity.

22. The fireplace grate of claims 18 further comprising:

a ceramic log connected to the base, wherein the ceramic log moves between a first position and a second position, wherein the first position permits insertion of the firelog or the starter material into the cavity, and wherein the second position encloses the cavity and prevents contact between the firelog and wood or ceramic logs placed on top of the platform.